TASMANIAN INDUSTRIAL COMMISSION
Industrial Relations Act 1984
s23 application for award or variation of award

The Minister administering the State Service Act 2000
(T13077 of 2008)

The Community and Public Sector Union (State Public Services Federation
Tasmania) Inc.
Health Services Union of Australia, Tasmania No. 1 Branch
(T13083 of 2008)

DEPUTY PRESIDENT P C SHELLEY

Award variation – personal leave – bereavement leave – consent order issued

GENERAL CONDITIONS OF EMPLOYMENT AWARD

ORDER BY CONSENT -

No. 2 of 2008

THE GENERAL CONDITIONS OF EMPLOYMENT AWARD IS AMENDED IN THE
FOLLOWING MANNER:
(1) **BY INSERTING A NEW CLAUSE 33 – BEREAVEMENT LEAVE AS FOLLOWS:**

"**33. BEREAVEMENT LEAVE**

The provisions of this clause apply to permanent and fixed-term employees but do not apply to casuals. The entitlements of casual employees are set out in subclause (f).

(a) **Definitions**

(i) Household in respect of an employee means any person or persons who usually reside with the employee.

(ii) Immediate family in respect of an employee includes:

(1) spouse (including a former spouse) of the employee. Spouse means a person who is married or a person who is in a significant relationship within the meaning of the *Relationships Act 2003*.

A significant relationship is a relationship between two adult persons who:

(A) have a relationship as a couple; and

(B) are not married to one another or related by family.

(2) child or an adult child (including an adopted child, a step child or an exnuptial child), parent (including foster parent step parent or legal guardian), grandparent, grandchild, sibling or step sibling, of the employee or employee’s spouse.

(b) **Paid leave entitlement**

In the event of the death of a member of the employee’s immediate family or household an employee will be granted bereavement leave upon application being made to and approved by the employer without loss of pay or entitlement to continuous service for a period of up to ten days with the discretion of the employer to grant additional paid leave.

(c) This clause has no application where it coincides with any other entitlement to another period of paid leave.

(d) PROVIDED that no payment will be made in respect of the employee’s rostered days off.

(e) **Evidence Requirements**

The employer may request evidence of death in the form of a death notice, or other written evidence furnished by the employee to the satisfaction of the employer.
(f) Unpaid Bereavement Leave

The employee may take unpaid bereavement leave by agreement with the employer.

(g) Casual Employees

(i) Subject to the evidentiary requirements in clause (e), casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of an immediate family or household member.

(ii) The employer and the employee will agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to two days per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

(iii) The employer must not fail to re-engage a casual employee because the employee accessed the entitlement provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected."

(2) BY INSERTING A NEW CLAUSE 34 – PERSONAL LEAVE AS FOLLOWS:

"34. PERSONAL LEAVE

The provisions of this clause apply to permanent and fixed-term employees but do not apply to casuas. The entitlements of casual employees are set out in clause (p).

(a) Definitions

(i) Health Practitioner means a registered health practitioner registered or licensed as a health practitioner under an appropriate law of the State of Tasmania.

(ii) Household in respect of an employee means any person or persons who usually reside with the employee.

(iii) Immediate family in respect of an employee includes:

(1) spouse (including a former spouse) of the employee. Spouse means a person who is married or a person who is in a significant relationship within the meaning of the Relationships Act 2003.

A significant relationship is a relationship between two adult persons who:
(A) have a relationship as a couple; and

(B) are not married to one another or related by family.

(2) child or an adult child (including an adopted child, a step child or an
exnuptial child), parent (including foster parent step parent or legal
 guardian), grandparent, grandchild, sibling or step sibling, of the
 employee or employee’s spouse.

(iv) Medical Certificate issued by a registered health practitioner is taken to be a
medical certificate for the purpose of this clause if it is issued in respect of the
area of practice in which the practitioner is registered or licensed under an
appropriate law of the State of Tasmania that provides for the registration or
licensing of health practitioners.

(v) Personal Leave means leave provided for:

(1) personal illness or injury; or

(2) to care for members of their immediate family or household who are sick
 and require care and support; or

(3) to care for members of their immediate family or household who require
care due to an unexpected emergency.

(b) Amount of Personal Leave

(i) Personal leave is available to an employee, when the employee is absent:

(1) due to personal illness or injury; or

(2) for the purposes of caring for an immediate family or household member
 who is sick and requires the employee's care and support or who
 requires care due to an unexpected emergency.

(ii) Personal leave accrues according to length of service. Part time employees are
entitled to the same personal leave credits as a full time employee but on a
pro-rata basis according to the number of hours worked compared to full time
employees. Payment for personal leave will only be made for those hours
that would normally have been worked had the employee not been on
personal leave.

(c) Personal leave triennium entitlement for permanent employees

The entitlement to personal leave for an employee who is employed on a
permanent full-time basis is credited in advance and:
(i) is provided on a three-year or triennial cycle, and commences on the first day of employment and on the 3rd, 6th, 9th and every third anniversary of employment thereafter.

(ii) each three year cycle is separate and is not cumulative to each three year period.

(iii) is renewed according to the triennial cycle, except for a variation on the 5th and 10th anniversary of appointment when the entitlement increases;

(iv) if personal leave with full pay is exhausted in any triennial period personal leave is available at half pay and without pay;

(v) personal leave is managed according to the following table:

<table>
<thead>
<tr>
<th></th>
<th>Full pay</th>
<th>Half pay</th>
<th>Without pay</th>
</tr>
</thead>
<tbody>
<tr>
<td>First year of service</td>
<td>22 days</td>
<td>44 days</td>
<td>132 days</td>
</tr>
<tr>
<td>a credit is provided.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>On the 3rd anniversary</td>
<td>22 days</td>
<td>44 days</td>
<td>132 days</td>
</tr>
<tr>
<td>of service the existing</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>balance is replaced and</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a new credit is provided.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>On the 5th anniversary</td>
<td>Add 44</td>
<td>Add 22</td>
<td>Credit</td>
</tr>
<tr>
<td>of service a new credit</td>
<td>days to</td>
<td>days to</td>
<td>remains 132</td>
</tr>
<tr>
<td>is added with the existing balance remains.</td>
<td>existing balance</td>
<td>existing balance</td>
<td>days</td>
</tr>
<tr>
<td>On the 6th anniversary</td>
<td>66 days</td>
<td>66 days</td>
<td>132 days</td>
</tr>
<tr>
<td>of service the existing</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>balance is replaced and</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a new credit is provided.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>On the 9th anniversary</td>
<td>66 days</td>
<td>66 days</td>
<td>132 days</td>
</tr>
<tr>
<td>of service the existing</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>balance is replaced and</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a new credit is provided.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>On the 10th anniversary</td>
<td>Add 66</td>
<td>No change</td>
<td>Reduce credit by 66 days</td>
</tr>
<tr>
<td>of service a new credit</td>
<td>days to</td>
<td>to existing</td>
<td></td>
</tr>
<tr>
<td>is added with the existing balance remains.</td>
<td>existing balance</td>
<td>balance</td>
<td></td>
</tr>
<tr>
<td>On the 12th anniversary</td>
<td>132 days</td>
<td>66 days</td>
<td>66 days</td>
</tr>
<tr>
<td>of service the existing</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>balance is replaced and</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a new credit is provided.</td>
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<td></td>
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</tr>
</tbody>
</table>

This cycle is repeated every three years on the anniversary of service.
(d) Personal Leave Entitlement for Fixed Term Employees

The entitlement to personal leave for an employee who is employed on a full-time fixed term basis is credited in advance after 20 working days of service and:

(i) provides for 10 days leave for each full year of service;

(ii) unused personal leave credits accumulate and carry forward each year;

(iii) if in any personal leave year personal leave with full pay is exhausted personal leave without pay is available provided the absences are appropriately certified by a registered health practitioner;

(iv) a period of personal leave does not extend the period of employment;

(v) for employees employed for less than 12 months personal leave is credited in direct proportion of their employment compared to full time equivalent employment.

(vi) A fixed term employee who has completed:

(1) 12 months continuous service and is likely to complete a further three years’ continuous service, as certified by the employer; or

(2) four years continuous service;

is entitled to personal leave according to sub-clause (c), as if that employee was a permanent employee.

(e) Conversion from fixed term employment to permanent employment status.

(i) A fixed-term employee who becomes a permanent employee is entitled to personal leave according to sub-clause (c), as if the employee had been appointed as a permanent employee on the first day of continuous service and calculations of entitlements are to be made accordingly.

(ii) A fixed-term employee to whom sub-clause (e)(i) applies and who otherwise would have received a greater entitlement as a fixed term employee is to receive that entitlement if personal leave in excess of the entitlement of sub-clause (c) is required.

(iii) An employee to whom sub-clause (e)(ii) applies is entitled to personal leave at half-pay and without pay appropriate to their years of service in accordance with sub-clause (c) if personal leave on full pay is exhausted.

(f) The effect of workers compensation

An employee is not entitled to take paid personal leave for a period during which the employee is receiving workers’ compensation.
(g) Personal Leave for Personal Injury or Sickness

An employee is entitled to use the full amount of their personal leave entitlement for the purposes of personal illness or injury, subject to the conditions set out in this clause.

(h) Personal Leave to Care for an Immediate Family or Household Member

(i) An employee is entitled to use up to 10 days personal leave each year to care for members of their immediate family or household who are sick and require care and support or who require care due to an unexpected emergency, subject to the conditions set out in this clause.

(ii) Leave may be taken for part of a single day.

(iii) By agreement between an employer and an individual employee, the employee may access an additional amount of their accrued personal leave for the purposes set out in clause (h)(i), beyond the limit set out in clause (h)(i). In such circumstances, the employer and the employee will agree upon the additional amount that may be accessed.

(i) Sole person accessing leave

In normal circumstances an employee is not to take leave for caring purposes where another person has taken leave to care for the same person.

(j) Employee Must Give Notice

An employee is required to provide notice in writing for leave to be approved.

(i) An employee absent on personal leave for personal injury or illness (except in exceptional circumstances) must inform the employer of the employee’s inability to attend for duty within two hours of commencement time of normal duty on the day of the personal leave absence.

As far as practicable the employee is to state:

(1) the nature of the injury or illness and;

(2) the estimated duration of the absence.

(ii) As far as practicable an employee taking personal leave to care for members of their immediate family or household who are sick and require care and support, or who require care due to an unexpected emergency is to give the employer:
(1) notice prior to the absence of the intention to take leave;

(2) the name of the person requiring care and their relationship to the employee;

(3) the reasons for taking such leave; and

(4) the estimated length of absence.

(iii) If it is not practicable for the employee to give prior notice of the absence, the employee must notify the employer at the earliest opportunity on any day leave is required and provide an estimation of the length of leave required.

(k) Evidence Supporting Claim

Subject to subclause (l) when taking personal leave the employee is to prove to the satisfaction of the employer that the employee was unable to attend duty on the day or days on which personal leave is claimed.

(i) Where evidence is required and where reasonably practicable to do so;

(1) An employee absent on account of personal injury or illness is to provide a medical certificate from a registered health practitioner

(2) Where taking leave to care for members of immediate family or household who are sick and require care and support the employee is to provide a medical certificate from a registered health practitioner stating the illness of the person concerned and that such illness requires care by the employee

(3) Where taking leave to care for members of immediate family or household who require care due to an unexpected emergency, the employee is to provide documentation acceptable to the employer stating the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

(ii) If it is not reasonably practicable for the employee to give the employer a medical certificate a statutory declaration made by the employee, stating the illness of the person concerned and where applicable that such illness or unexpected emergency requires care by the employee.

(l) Days without medical certificate for personal injury or illness

(i) Where leave is granted under this clause for personal leave for personal illness or injury for a period of three or more consecutive working days, the third and subsequent days are without pay unless the leave is supported by a medical certificate from a registered health practitioner.
(ii) A medical certificate is required for each personal leave absence for personal illness or injury after the employee has taken an aggregate of five working days without a medical certificate in any personal leave year.

(m) Calculation of Personal Leave year

(i) A personal leave year for the purpose of this clause means 12 months of continuous paid employment from the commencement of employment including periods of paid leave.

(ii) For any period of leave without pay, excluding personal leave without pay as prescribed, taken by an employee of more than 20 working days in aggregate in any personal leave year the whole of that period is not to count as service for the purpose of calculating the personal leave accrual date.

(n) Verification of illness

Personal leave on account of personal illness or injury will not be granted to an employee who is suspected of being absent from duty without sufficient cause, and in order to satisfy the employer that there was or was not sufficient cause, the employer may direct an employee to undergo a medical examination by a registered health practitioner selected and paid for by the employer at any reasonable time and place and with reasonable notice.

(o) Unpaid Personal Leave

Where an employee has exhausted all paid personal leave entitlements, they are entitled to take unpaid personal leave to care for members of their immediate family or household who are sick and require care and support or who require care due to an expected emergency. The employer and the employee will agree on the period. In the absence of agreement, the employee is entitled to take up to two working days per occasion, provided the requirements of subclauses (j) and (k) are met.

(p) Casual Employees – Caring Responsibilities

(i) Subject to the evidentiary and notice requirements in subclauses (j) and (k) casual employees are entitled to not be available to attend work, or to leave work if they need to care for members of their immediate family or household who are sick and require care and support, or who require care due to an unexpected emergency.

(ii) The employer and the employee are to agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to two working days per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
(iii) An employer must not fail to re-engage a casual employee because the employee accessed the entitlement provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected."

OPERATIVE DATE

This variation shall come into operation from the first full pay period to commence on or after 17 March 2008.

P C Shelley
DEPUTY PRESIDENT

29 February 2008